Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996:	)	DA 97-385
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other Customer Information	)	

REPLY COMMENTS OF U S WEST, INC.

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SUMMARY

Those filing comments opposing BOCs sharing of CPNI with their Section 272 and 274 affiliates, based on customer approval models advanced as appropriate within an existing business relationship for other carriers (in particular, a notification and opt-out model), make the most protectionist and anticompetitive arguments. They support these arguments on the theory that Congress was "clear" that those BOC affiliates created pursuant to Sections 272 and 274 must be treated as "third parties" *vis-a-vis* the customers of the BOCs. But those statutory sections require no such interpretation. And, the section that deals most directly and particularly with CPNI, Section 222, does make clear a Congressional intent that "all telecommunications carriers" be impacted similarly by the statute.

It is fair to say that had the Commission not previously (and U S WEST believes erroneously) determined that CPNI was "information" as that word is used in Section 272(c)(1), those commentors arguing against a statutorily-required BOC affiliate having access and use of BOC CPNI would have virtually no statutory arguments to support their positions that BOC affiliates should be treated differently from the affiliates of any other telecommunications carrier affected by Section 222(c)(1). That is because they should not be.

Section 222, the specific statutory provision dealing with CPNI, is structured such that customer approval (not written customer authorizations) is the only necessary prerequisite to the broad use of CPNI across a corporate enterprise. In those instances where a customer desires that the CPNI be provided to a person outside of that corporate enterprise, its designation in writing will accommodate the customer's choice and accomplish the customer's objectives. In essence, that section leaves the choice on CPNI access and use in the hands of the customer, allowing for accommodation of existing customer privacy expectations and continued delivery of integrated, quality customer service. In this regard, Section 222(c)

reflects a Congressional balancing of customer privacy and competitive interests similar to that repeatedly reached by the Commission.

While Sections 272 and 274 require that, in specific circumstances, a BOC provide CPNI to others who are authorized to receive it, neither statutory section references or addresses the "approval" or authorization process. A determination that either of these sections compels the conclusion that BOC Sections 272 or 274 affiliates must be treated as "third parties" and must secure affirmative written customer authorization before they can access and use BOC CPNI would be wrong as a matter of statutory construction, as well as wrong as a matter of competitive or public policy.

In the Commission's Brief in the SBC v. FCC court case (involving the AT&T/McCaw merger), the Commission advocated the position that "Courts have consistently recognized that, whatever its effects on competitors, capitalizing on information efficiencies does not harm competition." The Commission was correct in its advocacy. As it observed, allowing use of CPNI across corporate affiliates "is manifestly pro-competitive and beneficial to consumers." Those benefits include not only the accommodation of customer's desires for one-stop shopping, but the fact that information sharing creates additional market choices, with attendant price competition, if not overall market growth.

Against those demonstrated benefits, the commentors in this proceeding would have the Commission believe that Congress intended to deprive the BOCs of the ability to use ther CPNI information similarly to their competitors; that Congress intended to deprive the customers of the BOCs (those that do not leave for competitive alternatives) of the informational efficiencies associated with the sharing of CPNI, including the ability to offer a range of new products and services (from interexchange services to wireless services to cable services) just as other competitors would be able to do; that Congress intended Section 272 affiliates to be starved of information that might lead to additional market offerings, with potentially lower prices; and that Congress meant to depress the vitality of those companies

that might otherwise have the robustness, through efficiencies of scope and scale, to compete with an AT&T. There is simply nothing in the language of Sections 272, 274 or their legislative histories to support a finding that Congress meant to create such a customer-punitive or competitively-depressing result.

For all these reasons, the Commission should reject the arguments of those commentors contentending that BOCs, alone of all competitors, should not be able to share their CPNI with their affiliates, if they have the requisite approval. The approval process should be in accord with whatever process is determined to be appropriate for businesses having an existing relationship with a customer.

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I. INTRODUCTION

In reviewing the comments of those opposing the ability of Bell Operating Companies ("BOC") to share their commercial business information among their internal operating divisions or across their corporate enterprises (particularly those constituted pursuant to the Congressional mandates of Sections 272 and 274), one is struck by the scope and nature of the protectionist,[1] parochial and self-serving arguments. That the arguments are supported by advocacy that amounts to not much more than "clear Congressional mandates require us to conclude" that BOCs should be converted to non-players in the new competitive environment required by the Telecommunications Act of 1996 ("1996 Act" or "Act") is small comfort. While the Congressional intent associated with the application of Section 222 is quite clear (applicable to all carriers), the kind of punitive Congressional intent that commenting parties allege to be manifest in Sections 272 and 274 with respect to BOCs is simply not evident.

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[1] In defending itself against challenges that it should not be able to use its commercial, customer information with McCaw, AT&T characterized the arguments against such sharing as "naked protectionist pleas to prevent competition." AT&T's and McCaw's Opposition to Petitions for Reconsideration at 4, In the Matter of American Telephone and Telegraph Company and McCaw Cellular Communications, Inc., Applications for Consent to Transfer of Control of Radio Licenses, File No. ENF-93-44, DA 93-1119, filed Nov. 2, 1994. AT&T's characterization of such "no sharing" arguments remains accurate to this day.

This filing round demonstrates the extent to which individual competitors are more than willing to sink the public interest for their own pecuniary benefit. Those opposing BOCs' sharing of Customer Proprietary Network Information ("CPNI"), a sharing repeatedly found to be in the public interest, enthusiastically appropriate the Federal Communications Commission's ("Commission") "absolute" nondiscrimination position with respect to Section 272(c)(1)[2] (a position that is, at a minimum, debatable). With that "inch," these commentors gleefully run the mile.

In their view, the nondiscriminatory provisioning of CPNI requires (variously) that a BOC's Section 272 affiliate can only have access to CPNI of the BOC upon affirmative written customer approval as would other third parties and/or cannot have CPNI based on a notice and opt-out unless all third parties can secure customer approval through the same process;[3] that BOCs must "solicit" approval for third parties when they communicate with their customers about how CPNI might be shared;[4] and that BOCs and their affiliates should engage in marketing, including explicitly permitted joint marketing, without the benefit of

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[2] See, e.g., AT&T at 4, 9, 10; MCI at 11; WorldCom at 4-9; TRA at 5-6, 8, 10-11. Compare Cox at 2-4 (making the same arguments, but not citing to the FCC's prior determination); Airtouch at 3 (citing to the Commission's Interconnection Order and Non-Accounting Safeguards Order).

Every commentor that responded to the issues associated with Section 272(e) (see, e.g., AT&T at 16-17; Alltel at 7; Cox at 9-10; MCI at 24; TRA at 15; WorldCom at 16-18; Sprint at 14-15) claimed that that Section, just like Section 272(c)(1), applied to CPNI and prohibited the BOC from sharing the CPNI with its affiliate in a different manner than the BOC shared with unaffiliated entities. None of the commenting parties supporting this interpretation explains why Congress would have intentionally included CPNI in the word "information" in Section 272(e), if it already had included it in Section 272(c)(1) as a general nondiscrimination requirement. Furthermore, none addresses why Congress would have so diffusely addressed CPNI in two separate subsections of Section 272 when it so specifically addressed the matter, in detail, in Section 222.

[3] See, e.g., AT&T at 5, 6-8, 9, 22, 24; Sprint at 2, 4, 6, 7; Cox at 4-5; TRA at 5-6; WorldCom at 6, 7-8.

[4] See, e.g., AT&T at 12-13 (a blanket approval that would allow sharing with the BOC affiliate and any other requesting entity should be done. But see note 47 and associated text, infra (mentioning AT&T's objection to just such an approach when it was argued that it should deploy such a model), 25-26; Sprint at 8-9; Cox at 6; TRA at 11-12.

customer identifiable information and should be unable to utilize such information in integral aspects of marketing and sales, such as product concept, design or development.[5]

Other than bare assertions, most commentors opposing BOC sharing of CPNI do not mention consumer welfare or try to explain how their positions advance that welfare. Based on the comments, we are expected to assume, rather, that Congress wanted to engage consumers in a tiresome, confusing process of responding to multiple carrier requests to use information already in their possession across a variety of products/service offerings;[6] that Congress wanted a BOC Section 272 affiliate to begin business -- unlike other competitors against whom it would be competing -- with no customer information;[7] that Congress -- despite its appreciation of customers' desires for one-stop shopping -- wanted to frustrate that

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[5] AT&T at 15-16; Cox at 8; MCI at 21-23; TRA at 13; WorldCom at 14-15; Sprint at 13.

[6] Right now, of course, many mass market customers have one carrier for local service, one for interexchange toll, and perhaps one for wireless. The theory of some commentors is that a provider of one of these services should have to get the affirmative written consent of the customer before it could use the CPNI in its possession to expand its product/service line, which would enable the supplier to increasingly take on aspects of a "one-stop shopping" supplier. Competition Policy Institute ("CPI"), generally; MCI, generally. There is no evidence either in the record or outside it that would support such a rigid approach to serving customers.

[7] An affirmative written approval requirement depresses access to any meaningful amount of information. Compare Sprint at 2-3 (noting this fact ("permission will rarely be granted") and reporting on a Sprint affirmative written consent trial where "only a very few customers . . . responded"). This is, of course, consistent with past Commission assumptions (mass market "customers could be expected to deny authorization to the BOCs by default and thus to frustrate development of the market.", from FCC Ninth Circuit Brief (Brief for Respondents, People of the State of California, et al. v. FCC, Nos 92-70083, et al. (9th Cir.), filed July 14, 1993 ("FCC Brief in 9th Circuit") at 72)), as well as experience in the area of LOA returns in a PIC environment ("carriers have had little success in having customers return the LOA, and it tends to discourage competition;", AT&T/MCI Order, 7 FCC Rcd. 1038, 1045 ¶ 44 (1996). It is also supported by other existing record evidence. See GTE's Comments, filed June 11, 1996, CC Docket No. 96-115 at 6 n.9. Thus, there is no support for Sprint's undemonstrated claim that "subscribers may be more willing to respond affirmatively to a CPNI authorization request which comes from their local telephone company than from some other entity with which the subscriber has no prior business relationship." Sprint at 8. Response rates associated with prior written approvals are abysmal, regardless of the existence of a business relationship and even when customers are committed to doing business with a firm. Compare Bureau Waiver Order, 101 FCC 2d at 942 ¶ 21 (1985) (recognizing that customers who make a verbal commitment with a business to use that business' service might not return a signed authorization).

desire when a customer dealt with a BOC or a BOC Section 272 affiliate by rendering the BOC or its affiliate uneducated about the customer or capable of providing only the most "vanilla" of service offerings.

Under this scenario, one has to assume that Congress meant to punish consumers dealing with a BOC or its affiliate -- not just new customers, but existing ones, as well. One would have expected something a lot clearer from a Congress with such a punitive intent than the language included in the provisions being addressed. The absence of such a clear expression is the best evidence that no such intent existed.

In reading the comments of those opposing BOCs' use of CPNI in a manner that would clearly promote consumer welfare and competition, one is struck by a number of observations:

- How often the statutes the Commission is construing are claimed to be clear on their face, thus requiring no interpretation.[8] This position is advanced as a "get the BOCs" argument. Congress meant only negative things to happen to them. Of course, if the statutory provisions were so clear, the instant proceeding would not still be ongoing. The statutory provisions, while they do not require regulatory interpretation, are subject to a range of interpretations. Some are more reasonable than others; some advance the public welfare; others defeat it. Indeed, if there is a "clear" discernable Congressional intent, it is found in the provisions of Section 222 that applies equally to "all telecommunications carriers" and is written in such a manner to accommodate differing customer privacy expectations with respect to existing suppliers and others.

- How often it is asserted that consumer privacy expectations would be compromised by a BOC's use of its CPNI among its corporate family.[9] Of course, no facts are ever proffered to "prove" these

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[8] See, e.g., AT&T at 4 (Sections 272 and 274 "impose explicit additional" requirements on the BOCs); MCI at 6 (arguing that the legislative history of Section 222, as well as the statutory language "requires" a reading that restrictions on intracompany and affiliate use of CPNI were intended. MCI, however, never supports its legislative history argument (see note 20, infra) and it is obvious that the statute does not specifically ever use the words "intracompany" or "affiliate"); WorldCom at 3 (arguing that Congress created a "clear dichotomy in the 1996 Act between the actions of the BOCs and their affiliates, and all other unaffiliated entities, with regard to CPNI" and that Section 272 "create[s] unequivocal nondiscrimination requirements" on the BOCs with respect to CPNI); Sprint at 1 (arguing that CPNI is "precisely the type of information which the section 272(c)(1) nondiscrimination safeguards were designed to address").

[9] CPI at 6 (asserting that allowing a BOC to share CPNI with an affiliate "would violate the consumer's expectation of privacy"); WorldCom at 21 ("a residential customer's privacy interest in his or her CPNI is significantly heightened when that CPNI is controlled and utilized, without prior affirmative consent, by a dominant ILEC such as a BOC, as opposed to a nondominant telecommunications service provider"); Cox at 8 (arguing that "release of customer-specific information" (and using the term "release" to mean internal use) "is never in the public interest without the customer's explicit consent."); TRA at 5 (asserting that a

assertions. Indeed, all the evidence introduced in the record so far,[10] as well as federal regulatory expertise in the matter of customer privacy and affiliate sharing,[11] is to the contrary. Absent something more substantial by way of evidence than conclusory remarks, the Commission cannot reasonably find in support of a position that internal (or affiliate) use of CPNI compromises privacy expectations. In law and in fact, it does not.

- How rare are there references to the consumer welfare or consumers' interests, by those opposing BOC CPNI use or arguing that the customer approval to use the information must be secured in an identical manner as between those companies having an existing business relationship with a customer and those who do not. Evidence demonstrates that mass market consumers look to the companies with whom they have a relationship to provide them customer care, including information about new products and services across service categories.[12] No commenting party

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"customer has a reasonable expectation that its CPNI will not be used to provide or market any service other than the service from which the information was derived.").

Of course, the Pacific Telesis submission demonstrates that customers have expectations at odds with what the commentors cited above represent. (When making reference to the Pacific Telesis submission entitled, "Public Attitudes Toward Local Telephone Company Use of CPNI, Report of a National Opinion Survey Conducted November 14-17, 1996," U S WEST makes reference to either the "Survey," which is actually Appendix E of the Report and reflects the actual questions asked the individuals polled, or refers to the "Analysis," by which we refer to the material included in Nos. 1-12, following the Introduction.) For example, Questions 10-11 of the Survey make obvious that individuals are comfortable being approached about new products and services, even when their CPNI is being accessed or used to target the communications.

[10] See, e.g., CBT at 2 (citing to Pacific Telesis, January 24, 1997 *ex parte* letter, CC Docket No. 96-115, p. 17, which in turn cited to a 1994 survey by Louis Harris and Associates. That survey found that -- at base -- 63 percent of the public deemed affiliate sharing acceptable. As U S WEST pointed out in an earlier filing with the Commission on the matter of CPNI access and use, as the particular type of sharing was described, the approval figures increased ranging from 70% to 77%. Comments of U S WEST Communications, Inc., In the Matter of Additional Comment Sought on Rules Governing Telephone Companies' Use of Customer Proprietary Network Information, CC Docket Nos. 90-623, 92-256, filed Apr. 11, 1994, at 18 n.32.

[11] The Commission has consistently held that customer privacy expectations are protected by allowing information to be used internally, subject to the individual's ability to choose to restrict the information; while requiring something more affirmative to release information to third parties. It has also permitted sharing of information between companies (Bank America Order, 8 FCC Rcd. 8782, 8787 ¶ 27 (1993); AT&T/McCaw Order, 9 FCC Rcd. 5836, 5886 ¶ 83 (1994)); and has held that the absence of privacy angst that an individual enjoys within an existing business relationship extends to affiliates of the business. TCPA NPRM, 7 FCC Rcd. 2736, 2738 ¶¶ 13-14 (1992); TCPA Order, 7 FCC Rcd. 8752, 8770 ¶ 34 (1992).

[12] For example, as U S WEST has pointed out, based on a statistically valid survey done by us in 1996, 70% of those surveyed supported certain types of integrated cable/telephony offerings, with the approval rating rising to 83% within certain customer segments. U S WEST Opening Comments [in THIS current docket] at 6. See also Pacific Telesis Survey, Questions 9-11 and Analysis page 9 (the latter demonstrating that within certain customer segments, interest in receiving information from the current supplier is even higher than across the general consumer base as a whole).

has demonstrated that providing maximum consumer convenience is "inconsistent with the goals of competitive neutrality and protection of consumers' privacy interests."[13] Indeed, just the opposite is true, particularly for those consumers who are not "targeted" by new entrants or who are targeted for second or third tier competitive entry strategies.

- Barring any evidence to support their claims that broad use of CPNI compromises customer privacy expectations, or that customers fear existing suppliers much as they do third parties, or that Congress wanted to deprive BOC customers of the market and informational efficiencies enjoyed by their competitors, commentors attempt to leverage prior survey evidence about general privacy angst,[14] resort to *ad hominim* arguments,[15] and matters irrelevant to the current proceeding.[16]

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[13] CPI at 5, 6 (asserting, again without proof and contrary to the record evidence that customers are highly interested in receiving information from their phone company about a broad range of services, ranging from local service to interexchange service to wireless service to cable service, that "allowing an RBOC local exchange service provider to pass on CPNI to any of its affiliates would not provide any significant consumer convenience."). Other than referencing generally the pro-competitive goals of the 1996 Act, Airtouch never mentions consumer welfare at all in its comments.

[14] Cox, Attached letter from Alexander V. Netchvolodoff to Reed E. Hundt, dated Jan. 27, 1997 at 2, citing to a 1994 Harris survey (where 82% of Americans expressed deep concern about threats to their personal privacy; and 78% expressed the opinion that they had lost control over how personal information about them is used). The particular questions referenced by Mr. Netchvolodoff have become "index" questions, were included in the Pacific Telesis Survey (Questions 14-15A) and -- in 1996 -- produced higher percentages than those cited by Mr. Netchvolodoff. The responses to these index questions, however, do not deprive the other evidence in the Survey of its validity. Indeed, the index responses generally stand as a counterpoint to the fact that, despite general privacy anxiety, so many responding parties wanted information from their local telephone company and were comfortable with the role that access and use of CPNI might play in the conveyance of that information.

[15] MCI's attack on the Pacific Telesis Survey as being "intellectually dishonest" (MCI at 7) represents the height of unprofessionalism. Dr. Alan Westin, one of the principals in the development of the Survey, as well as in the actual conducting and reporting of the results, is esteemed in his field. His integrity is a matter of widespread knowledge. Barring some evidence to support its claim, MCI should be required to strike its libelous remark.

[16] MCI's discussion of the Commission's cellular rules, particularly 47 CFR § 22.903, comes to mind. MCI at 25-26. It is interesting to observe, however, that the existence of that rule resulted in BOC CPNI not being shared with the cellular affiliate, rather than compromise the privacy expectations of customers by sharing with all third parties. Whether this situation was in the public interest, particularly in light of the Commission's decision in the AT&T/McCaw Order, is questionable.

Additionally, MCI's discussion of Southern New England Telephone's ("SNET") refusal and U S WEST's withdrawal of a Universe List offering is beyond the scope of the instant proceeding. MCI at 2-3. However, Attachment A of this document provides U S WEST's rationale for withdrawing the offering. As will be obvious to the reader, U S WEST's decision was entirely reasonable given the language of the Commission in its Third Order on Reconsideration in the BNA Proceedings and the definition of CPNI in the 1996 Act.

In essence, the comments of those opposing BOC sharing of CPNI, when permitted pursuant to a reasonable approach to securing "customer approval," represent a clear gaming of the regulatory process -- a gaming the Commission has stated it will not endorse.[17] In the name of "nondiscrimination," these opponents would have the Commission construe the Act in a manner at odds with widely recognized rules of statutory construction, one contrary to the overall benefit of "competition" (as opposed to their clear self-interest), and -- most importantly -- at odds with any educated notion of consumer privacy or consumer welfare. The Commission should reject such invitations.

The Commission should construe Sections 222, 272 and 274 in a manner that gives meaning to each section. In doing so, however, it should construe the provisions with a clear sense of the overall pro-competitive nature of the 1996 Act, not with a view toward encumbering and hamstringing one of the current suppliers of telecommunications services to the mass market with restrictions and burdens not clearly articulated by Congress and at odds with consumer welfare.

There is nothing in the 1996 Act that requires BOCs or their affiliates (be they Sections 272 or 274 affiliates or other affiliates) from using the commercial information in their possession in accordance with their various business endeavors.[18] Similarly, there is nothing in the 1996 Act that requires customers tolerate having CPNI about them shared with strangers in order to allow their information to continue to be used by their current supplier, a supplier in the position to bring them new, quality products and services across a wide range of offerings.

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[17] First Report and Order, CC Docket No. 96-149, 5 Comm. Reg. (P&F) 696, 709 ¶ 19. ("The goal of this proceeding and others is to establish a regulatory framework that enables service providers to enter each other's markets and compete on an equal footing by not allowing one service provider to game regulatory requirements in such a way as to hinder competition."). Given what the FCC has stated in filed legal briefs regarding the benefits to both the public and to competition from sharing of information and informational efficiencies (see notes 35, 36, 39, 41, infra), the Commission must conclude that Congress did not mean to deprive the BOCs or their customers of these benefits.

Those opposing BOC use of CPNI continue to argue that a broad interpretation of Section 222 eviscerates both the privacy and competitive protections of that provision,[19] yet they offer little by way of evidence of legislative intent[20] or public policy to support their positions. On the other hand, persuasive arguments have been previously presented in this proceeding as to how a broad reading of Section 222 is true to the statutory language,[21] in concert with other statutory provisions addressing similar privacy concerns over individually identifiable information,[22] consistent with prior regulatory precedent with respect to both customer privacy concerns and competitive equilibrium, incorporates an approach that has been

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[18] In some circumstances, those uses are specifically endorsed by Congress and require no customer approval. In other circumstances, those uses are permitted with customer approval.

[19] MCI at 4 (calling the position proffered by AT&T and U S WEST in this proceeding an "extreme interpretation"), 8 (arguing that a broad interpretation would "nullify" Section 222).

[20] MCI, for example, argues that the "legislative history" of Section 222 supports a narrow reading and is to be read to provide customers "greater control over their CPNI" than they had before. In support of this position, MCI cites the Commission's NPRM in this proceeding (MCI at 5) and to Section 102 of the Senate Bill (id. at 6). See also Cox at 10.

While the Conference Report says it is adopting the Senate version of the what became Section 222, as NYNEX and U S WEST have previously pointed out, the provision is patently taken from the House bill, not the Senate bill. See U S WEST Opening Comments at 10, filed June 11, 1996, CC Docket No. 96-115 (referencing the same observation made in the NYNEX Petition, Mar. 5, 1996 at 6-8). The Senate bill, for example, applied only to BOCs; while the House bill applied to "all carriers." Furthermore, a simple visual comparison of the provisions makes clear that Section 222(c), in particular, is formatted more along the lines of the House bill than of the Senate bill. While there certainly were modifications made to the language of the House bill by the Conferees (for example, the enacted version eliminated specific reference to time-sensitive information services, as well as removed specific references to "telephone exchange service or telephone toll service"), its genesis as the finally enacted Section 222(c) is obvious.

Additionally, as U S WEST pointed out in earlier comments in this proceeding, the House bill itself was one in a series of Representative Markey proposals (having been preceded by H.R. 3432 (applicable only to LECs and requiring "affirmative consent" to use CPNI broadly) and H.R. 3626 (applicable to all carriers with requisite "approval")). See U S WEST Reply Comments at 11 n.52, filed June 26, 1996. MCI's continued reliance on the Senate's interpretation of its provision (which focused exclusively on the BOCs) (MCI at 6, 9) is misplaced.

[21] AT&T and U S West comments in this proceeding, generally. See also AT&T's current filing at 2-4, 8 and n.9.

[22] See U S WEST June 11, 1996 Comments at 7-9; U S WEST Mar. 17, 1997 Comments at 2 n.4. Compare 47 USC **Section** 551.

judicially endorsed as pro-competitive,[23] and comports with customers' expectations about both privacy and product/service access -- either through a one-stop shopping contact or through targeted marketing.[24] In essence, a broad reading of Section 222 not only is entirely permissible but is most in the public interest from both a privacy and a competitive perspective.

II. AT&T'S COMMENTS

Without a doubt, the most annoying comments addressing the matter of CPNI access and use are those of AT&T. While continuing to argue for broad intra- and inter-corporate CPNI use for itself, and stressing the propriety of a business having an existing business relationship with an individual securing customer approval based on a notification and opt-out method, AT&T argues that such should not be permitted with respect to BOC affiliates required under the 1996 Act. These companies, AT&T asserts, should all be treated as "third parties" and should have to secure customer approval to use CPNI in whatever manner the Commission deems appropriate for third parties.[25]

Furthermore, AT&T leads the pack in arguing that "CPNI is not a component of marketing or sales activity,"[26] postulating that "[t]he possibilities for joint marketing activities without using BOC CPNI are, quite literally, endless."[27] In support of this position, AT&T claims -- in what can most generously be described

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[23] SBC Communications Inc. et al. v. FCC, 56 F.3d 1484, 1494 (1995) (noting that the Commission's decision to allow the sharing of CPNI between AT&T and McCaw furthered the public interest because the increased service offerings likely to result from the use of such information would be expected to lower prices and there was at least some potential for a general overall market growth).

[24] Pacific Telesis Survey, Questions 9-11. See also AT&T at 3-4. And see Commission's remark in a different context to the effect that "permitting the BOCs relatively unrestricted access to small customer CPNI would facilitate 'effective integrated marketing of . . . services and . . . the efficient use of carrier resources to provide . . . services to a broad spectrum of customers.'" FCC Brief in 9th Circuit at 96-97 (quoting from 6 FCC Rcd. 7571, 7636 ¶ 130 (1991)).

[25] AT&T at 5, 6-8, 9, 22, 24. See also note 3, supra.

[26] Id. at 14-16.

[27] Id. at 16. Other commentors join AT&T in arguing that marketing, including "joint marketing" (as that term is used in Section 272(g)(3)), does not require access or use of CPNI. See, e.g., WorldCom at 14-16 (arguing that joint marketing and access or use to CPNI are not "inextricably intertwined" and that while

as a somewhat disingenuous commercial remark -- that "marketing . . . even in its broadest construction deals with when, what and how information will be presented to the consumer" and does not necessarily address "whether CPNI . . . may be employed for service development, or to target the customer for any marketing or sales efforts."[28] It is astounding that this rhetoric comes from the company that brings us "the

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"CPNI certainly can be very helpful in some cases in a carrier's marketing and sales efforts" it is an "(unsupported) stretch to term CPNI 'essential' . . . to engage in joint marketing and sales"); TRA at 13-14 (arguing that BOCs (as "third parties") should not be able to access CPNI during the course of the marketing and sales process regardless of the "helpful[ness]" of CPNI to the process because a "sale can be closed without access to a customer's CPNI"); Cox at 8 (CPNI "is not essential for the success of a joint marketing venture" because "[i]n very few circumstances, if any, is customer-specific information required for planning legitimate marketing strategies and implementing marketing programs"); Sprint at 1, 13 (noting that CPNI "is obviously useful to the marketing and sales efforts of providers of both local and interexchange services" and that it is a "useful tool for implementing a successful sales and marketing campaign in that CPNI allows the carrier to target its efforts to potential customers who are most likely to purchase the carrier's services"), 12-13 (but claiming that joint marketing need not rely upon CPNI).

As U S WEST demonstrated in our initial Comments in this filing round, a sale cannot generally be closed without at least access to CPNI, because the BOC systems are such that the CPNI is pulled up on the screen once the customer's telephone number is input. U S WEST Mar. 17, 1997 Comments at 25-26 and n.46. Furthermore, Cox clearly underestimates the value of CPNI in crafting target marketing strategies, both from the perspective of the supplier (i.e., attempting to communicate with those individuals most likely to purchase) and the customer (i.e., receiving information on those products and services of most interest to the individual, rather than be "shotgunned" by solicitations). See Bell Atlantic/NYNEX at 5; Ameritech at 6 and n.8.

[28] AT&T at 4-5 (emphasis added). Later in its filing, AT&T does acknowledge that the "development of the services being sold could itself be viewed as 'essential to' the act of marketing or selling." Id. at 16 n.17. Compare TRA at 13-14 (arguing that the Bureau "attaches an unduly expansive meaning to the terms 'marketing' and 'sales'"); Airtouch at 6, claiming that "marketing" is "generally understood to mean the advertising of services, the research associated with developing those advertisements, and sales efforts" and arguing that "none [of those activities] inherently requires unrestricted access to local calling CPNI").

In CC Docket No. 96-149, Bell South has petitioned for reconsideration on the matter of the Commission's adoption therein of an extremely narrow definition of "joint marketing." BellSouth Petition for Reconsideration, CC Docket No. 96-149, filed Feb. 20, 1997 at 7-10. As BellSouth points out in its filing, "planning, design and development efforts concerning product development and strategy . . . [are] efforts . . . required in order to determine the nature and extent of the services" a company sells. Id. at 8. Furthermore, "[v]irtually any modern marketing text would include product planning, design and development within the parameters of the term 'marketing.'" Id. at 9. U S WEST supports BellSouth's position.

most powerful network on earth,"[29] boasts of its database marketing capabilities,[30] and has unparalleled access to CPNI across the nation.[31]

AT&T's revisionist approach to the criticality of CPNI to a marketing operation is as remarkable as it is lacking in credibility. Since 1985, AT&T has argued the critical nature of CPNI marketing in general and to successful "one-stop shopping." It has also been an advocate for affiliate sharing of such information, arguing that such sharing promotes competition. Just a few of AT&T's remarks on this matter are included below.

- AT&T claimed that it was an "extraordinary premise that it is somehow improper for [it] to use information about what a customer buys (or contemplates buying) to suggest other products or services that the customer might purchase to better serve its total communications needs. . . . [T]his is the very reason that customers often choose to deal with a full-line supplier."[32]

- AT&T noted that one of the benefits of its merger with McCaw, including its sharing of CPNI, would be its ability to engage in cross-selling and in offering customers one-stop shopping[33] and targeted marketing,[34] activities the Commission had found to be in the public interest.[35] Those marketing efforts included providing "high quality services, superior customer support, and attractive prices," and exploiting the AT&T brand name.[36]

- AT&T has argued that, while diminishing a company's access to its customer information might not destroy joint marketing, "[i]t plainly would" "'undercut' the ability of the company" to engage

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[29] Current commercial with voice of Sam Waterson.

[30] Ameritech at 3; CBT at 3 ("The advent of competition in the local exchange market brings a number of new competitors from diverse industries, many of which will be large global competitors such as AT&T and Time Warner.").

[31] MCI at 9; Pacific Telesis at 4.

[32] Opposition of AT&T, filed Dec. 2, 1985, CC Docket No. 95-26 at 14-15.

[33] Final Brief of Intervenor AT&T Corp., SBC Communications Inc. et al v. FCC, ("SBC v. FCC") Nos. 94-1637 and 94-1639 (D.C. Cir.) filed Feb. 28, 1995 ("AT&T Final Brief") at 15-16.

[34] Id.

[35] AT&T Final Brief at 17; FCC Final Brief in SBC v. FCC, Nos. 94-1637 and 94-1639 (D.C. Cir.) ("FCC Final Brief in SBC v. FCC") at 47. The Commission's position in the AT&T/McCaw Case was consistent with its long-held position that depriving a company of access to its CPNI would undermine its marketing ability. AT&T CPE Relief Recon. Order, 104 FCC 2d 739, 766 ¶ 50 (1986).

[36] AT&T Final Brief at 16-17 (describing the entire package of activities as "marketing efforts"). See also FCC Final Brief in SBC v. FCC at 46-47 n. 32.

in one-stop shopping, noting particularly the problem associated with requiring affirmative written consent to access the information in question.[37]

- The benefits of information sharing, according to AT&T, not only extended to its bringing its efficiencies to the attention of customers,[38] but advanced the competitive process itself -- an outcome that "manifestly promotes the public interest."[39] Indeed, according to AT&T, depriving it of the use of its own information would "seek[ ] to prevent legitimate competition on the merits."[40]

- Citing to the Commission's pro-information sharing statement of position,[41] AT&T argued that the use of such information would expand consumer choices, which could lead to "'more price competition, an increased responsiveness to consumer needs, as well as technical and service innovation.'"[42]

While AT&T clearly remains wedded to its fundamental positions (as reflected in its comments in this proceeding regarding the "best" reading of Section 222 for most businesses with existing customer relationships), AT&T would have all of the market benefits identified above eliminated for the BOCs because (and apparently solely because) of purported Congressional mandates compelling such a result. AT&T argues that Congress mandated that BOCs be put in such a repressive position through its adoption of Section 272(c)(1) and its requirement that BOCs "operate independently"[43] from their Section 272 affiliate.

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[37] AT&T Final Brief at 17-18.

[38] Id. at 17, 19.

[39] Id. at 17. See also FCC Final Brief in SBC v. FCC at 49. ("It is manifestly pro-competitive and beneficial to consumers to allow a multi-product firm such as AT&T maximum freedom in offering its competitive services to all of its customers" by utilizing its CPNI.)

[40] AT&T Final Brief at 16.

[41] Id. at 18 n. 13, (where the Commission characterized the teachings of the legal cases cited to be that "courts have consistently recognized that, whatever its effects on competitors, capitalizing on informational efficiencies does not harm competition." referring to the FCC Final Brief in SBC v. FCC at 49-50); and AT&T 20-21 n.15.

[42] Id. at 17, citing to AT&T/McCaw Order, 9 FCC Rcd. at 5871-72 ¶ 57.

[43] AT&T at 6-8, 21 (it is because of this provision that a BOC Section 272 affiliate must be treated as a "third party"; if all third parties can benefit from on opt-out, then a BOC affiliate could use it; if not, then a BOC affiliate could not), 21-22 (CPNI restriction also required to assure operational independence of

Crafted this way, AT&T's argument is that, in the case of the BOCs, Congress has pre-determined that Congress -- rather than the customer (the primary focus of Section 222)[44] -- will control access to and use of CPNI. That Congressional pre-determination, according to AT&T, deprives certain BOC affiliates of the use of BOC commercial information, unless those affiliates gain access to that information as any stranger third party would.

This argument flies in the face of prior AT&T advocacy which has consistently acknowledged the propriety of internal use of information (across a broad range of affiliations)[45] and the need for something more affirmative before such information is released to third parties. For example,

- "AT&T's internal use of CPNI will complement and effectuate -- and not conflict with -- the normal expectations and intentions of customers who deal with AT&T."[46]

- The implementation of a CPNI standard where either all companies have access to the internal customer information of a single business based on an "opt in" or all have access based on an "opt out" would be inappropriate. The Commission's CPNI rules "simply effectuate the expectations and intentions of customers. . . . In dealing with other companies, no customer should reasonably expect that access to its 'proprietary' information will be limited within a company. To the contrary, customers anticipate that companies with use their knowledge of customers better to service customer needs. Conversely, customers have every

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Section 274 affiliate). With regard to its "operate independently" argument, AT&T is joined by others. Directory Dividends at 6; MCI at 14, 16; WorldCom at 20-21.

[44] AT&T/McCaw Brief at 19 (noting that under the FCC's existing CPNI rules "it is for the customer . . . to *determine whether and to what extent* AT&T's long distance customer information may be used in marketing the products and services to that customer."). CPI at 1 notes, correctly, that "control over consumer's CPNI should rest with the consumer." This is precisely how the FCC has resolved the matter of CPNI access and disclosure in the past, i.e., the customer has the choice to restrict use or authorize release of information.

Furthermore, the Pacific Telesis Survey evidence (as well as other evidence in this proceeding) supports the conclusion that consumers do not deem an existing supplier accessing CPNI information to inform or sell them new products and services as eliminating their control over CPNI, most particularly if they are advised of how CPNI is accessed and used generally, allowing any individual customer to opt out of the use.

[45] See, e.g., BankAmerica Order, 8 FCC Rcd 8782 (1993).

[46] AT&T Reply Comments, CC Docket No. 85-26, filed Jan. 3, 1986 at 4.

> reason to expect that a company will not, without authorization, disclose to third parties information about the customer."[47]

Indeed, AT&T still supports this advocacy -- for all businesses but the BOCs.

Neither AT&T, nor any other anti-BOC commentor in this proceeding, can point the finger at Congress in an attempt to successfully diffuse their otherwise anti-competitive arguments. The clarity of expression they assert is manifest is simply not evident. There is no compelling statutory mandate to construe the provisions of Section 272 along the lines proposed by AT&T and other "restrain-the-BOC" advocates.

It seems highly unlikely that Congress, who reinforced the notion of customer control over CPNI in its "approval" and "designation" language in Section 222(c), meant to "override" that foundation with the reference to the generic word "information" in Section 272. Nor does a Section 272 affiliate's use of CPNI, subsequent to appropriate customer approvals, compromise the "operational independence" of that affiliate. Within a Section 272(g)(3) environment, obviously, the joint marketing conduct itself is dependent on use of the commercial information in the hands of the two companies. But even beyond that use, a Section 272 affiliate using CPNI to craft its own products and services is operating independently from the BOC, using information that customers "approved" of it using.[48] Through the use of that information, it will create additional market choices, with attendant price competition if not overall market growth.[49]

Finally, the Commission's clear statement that upon Checklist certification, a BOC and its affiliate "will be permitted to engage in the same type of marketing activities as other service providers,"[50] strongly

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[47] Opposition of AT&T, CC Docket No. 85-26, filed Dec. 2, 1985 at 16 (footnote omitted).

[48] U S WEST also agrees with those commentors who assert that a service company communicating on behalf of a BOC and its affiliates about CPNI (including its access, use and disclosure) would be engaging in conduct not subject to any Section 272 or 274 prescriptions. See, e.g., BellSouth at 12 n.27, 24.

[49] Compare SBC v.FCC, 56 F.3d at 1495.

[50] Non-Accounting Safeguards Order, 5 Comm. Reg. (P&F) at 783 ¶ 291, cited by Ameritech at 5; BellSouth at 3, 7 and n.17.

suggests that Congress did not mean to starve the Section 272 affiliate of all customer information prior to its actual initiation of integrated in-region interLATA and local service offerings or to severely depress access to that information for a three or four year period. Such would deprive the affiliate of any meaningful opportunity to compete on equal footing with its competitors.[51]

For all of the above reasons, not the least of which is that the anti-BOC arguments are anticompetitive and potentially compromise not only individual expectations of privacy but the overall consumer welfare, the Commission should reject the arguments that would deprive BOCs, with requisite customer approval, from sharing CPNI internally and with their affiliates in conformity with any prescribed rules applicable to "all telecommunications carriers" under Section 222.

III. OTHER MATTERS DESERVING SPECIFIC RESPONSE

A. BOC Communications With Their Customers Regarding CPNI

A number of commentors argue that when a BOC communicates with its customers about its access, use and disclosure policies associated with CPNI, it is engaging in an "approval solicitation service."[52] U S WEST disagrees with such a categorization of a company's exercise of its commercial speech rights, particularly when those rights are exercised in a predicate communication necessary to ensure access to its commercial information and to share that information within its corporate enterprise.[53]

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[51] See BellSouth at 22 (citing to the Non-Accounting Safeguards Order at n. 715 (which itself cites to a piece of legislative history) to the effect that there is a Congressional intent "to provide parity between the [BOCs] and other telecommunications carriers in their ability to offer 'one stop shopping' for telecommunications services").

[52] AT&T at 12-13, 25-26; Cox at 6; TRA at 11-12; Sprint at 8-9 (such service constitutes the "procurement of . . . information"). Of course, Sprint is incorrect in this observation because a communication of information in no way amounts to a procurement of information. The BOC already has the information. It is engaging in a predicate action necessary to discern whether customer approval exists to provide that information to its affiliates. Assuming such approval exists, and the BOC is willing to provide CPNI to other entities with requisite approval, there is no discrimination.

[53] U S WEST at iii-iv, 2-5, 6-9. Accord BellSouth at 19, 29, 32 (the BOC is fulfilling its own obligations under the Act to protect the confidentiality of the customer's information and to use, disclose or permit

As pointed out by Bell Atlantic/NYNEX, Section 272(c) of the Act pertains to "dealings" between a BOC and its Section 272 affiliate. The kind of communication envisioned by a notification and opt-out process does not reflect a dealing between a BOC and its affiliate, but between the BOC and its customer.[54]

In addition to the fact that there is no "service" being rendered to the BOC affiliate when the BOC communicates with its customers, a requirement that a BOC "speak" on behalf of its competitors is calculated to lead to customer confusion and potential harm to the BOCs' own commercial and reputational self-interest. As noted by Ameritech, customers would view a communication by the BOC soliciting customer approvals to release CPNI as inappropriate, and perhaps misunderstand the communication as one "vouching for" the business practices of other companies.[55] The BOCs own reputation could be adversely impacted by the communication itself, as well as by the future conduct of others. In part, for this very reason, the First Amendment arguments raised by commenting parties should not be taken lightly.[56]

Similar to the above argument, a number of commentors assert that a "transaction" has occurred when a BOC communicates with its customers about its CPNI access, use and potential disclosure processes.[57] For example, Sprint claims that "[a] BOC's attempt to secure CPNI disclosure authorization for its affiliate would seem to be the type of business deal which falls squarely within" the definition of "transaction." These commentors are incorrect.

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access to the information only with the customers' approval). Compare Ameritech at 10 (arguing that even if a "service" would be rendered, it was not the type of service that should be provided to a third party).

[54] Bell Atlantic/NYNEX at A-4.

[55] Ameritech at 10.

[56] Ameritech at 10; BellSouth at 19-20, 29-30, 32; Pacific Telesis at 12-14, 26-28.

[57] AT&T at 17-18, 27; WorldCom at 19-20; TRA at 16; Sprint at 9, 16.

As Bell Atlantic correctly stated, "the seeking of customer approval is an arrangement between a BOC and its customer in order to meet a regulatory requirement, not a transaction with an affiliate."[58] Such communication does not constitute a "transaction" because it is not a transfer of an asset or the rendering of a service.[59] Rather, it is a communication necessary for the BOC to determine its authority with respect to the CPNI in its possession.[60] The resulting customer "approval" forms the foundation for whatever future "transactions" might occur, i.e., joint marketing or the licensing of the CPNI to an affiliate, for example.[61]

B. Opt-Out Approval Mechanisms

TRA argues that a customer who does not affirmatively restrict his/her CPNI in response to an opt-out notifications is indicating "that it has no particular interest in the confidentiality of its CPNI"[62] and has made "no judgment with respect to the confidentiality of its CPNI."[63] TRA cites to no evidence to support its conclusory remarks. This is not surprising, since the evidence that has been presented on this issue demonstrates that just the opposite is more demonstrably correct.

As the Pacific Telesis Survey and its supporting Analysis demonstrates, individuals are quite familiar with opt-out models and know how to use them.[64] Those who have exercised opt-outs are among those individuals who are most highly privacy sensitive.[65] Yet, included within that class are customer

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[58] Bell Atlantic at Attachment A, A-6, A-11. See also SBC at 15, 25.

[59] Prior BOC CPNI notifications have never been treated as a "transaction" or a "service" rendered to the BOC integrated but unregulated operations.

[60] BellSouth at 23, 33-34.

[61] SBC at 15.

[62] TRA at 3.

[63] Id. at 4.

[64] Survey, Question 5 (41% of those surveyed had received an opt-out communication); Question 6 (62% of those receiving such a communication had exercised the opt-out option).

[65] Analysis at 9.

segments who -- "even more strongly than the public at large" (approval rating of 88%)[66] -- approved of "receiving informational communications from businesses they patronize."[67] As the Pacific Telesis submission substantiates, these customer segments include "people who are aware of and have used an opt out from any business,"[68] as well as individuals from 18-34 years of age, African Americans and Hispanics.[69]

Moving more specifically to communications from their local telephone companies, 64% of the polled group (reflecting the public at large) indicated that they would be interested in being informed of new products and services by their phone company.[70] This group, again, reflected a higher approval rating for certain customer segments, including persons who had used an opt-out.[71]

Based on the above, it is clear that the majority of the American consuming public knows about opt-out notifications and how to use them. Having that knowledge, the majority of them would not opt-out of hearing from businesses they patronize, including their local telephone company. And, with respect to certain market segments, the "message" communicated by not opting out is not one of "indifference" as TRA asserts, but one of interest in the information being or potentially to be conveyed. Accordingly, TRA's "observation" is not only conclusory but uneducated.

C. Third-Party Prior Written Approvals to Access CPNI

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[66] Survey, Question 7.

[67] Analysis at 5.

[68] Id., noting a 92% approval rate from this customer segment.

[69] The "approval ratings" for these customer segments ran from 91 to 93%.

[70] Survey, Question 9; Analysis at 9.

[71] Analysis at 9. Within this customer segment, the approval rating was 72%. This segmentation also demonstrated an increased interest in such communications from Hispanics, African-Americans, women and individuals between 18-24 years of age, ranging from 69% to 79%. Id.

A number of commentors argue that Section 222(c)(2) evidences a Congressional intent that CPNI only be released to third parties where a written customer authorization is evident.[72] Others argue that Section 222(c)(2) creates a carrier obligation to release CPNI when a written customer designation is proffered, but does not prohibit the release of CPNI in all situations where a written document is not offered.[73]

U S WEST is on record as supporting the latter interpretation.[74] However, it is important to keep in mind that the past practice of most ILECs (BOCs included) has been not to disclose CPNI in the absence of a written request to do so. This practice was identified by AT&T as far back as the AT&T CPE Proceedings[75] and was incorporated into the CPNI release processes associated with enhanced service providers and CPE vendors with respect to both AT&T and the BOCs. This conservative approach to information release, undoubtedly, is the foundation for the continuing "trust" that consumers have imposed in the local telephone companies[76] and the overall consumer feeling that local telephone companies do not, and have not in the past, released information about their customers improperly.[77]

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[72] NTCA at 2; SNET at 6; CBT at 5; SBC at 6-7, 9, 19.

[73] Sprint at 2-3, n.1; AT&T at 7, 11; MCI at 10, 11 and n.20, 15; Directory Dividends at 8; Bell Atlantic/NYNEX at A-2; BellSouth at 14

[74] U S WEST at 17-18, 28.

[75] "AT&T will continue its current policy to make such information [CPNI] available to other CPE vendors if a customer so requests or authorizes." Comments of American Telephone and Telegraph Company, In the Matter of Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Company, CC Docket No. 85-26, filed Apr. 8, 1985, at 26 n.*. The practice, as least as it was observed by U S WEST during its affiliation with AT&T and subsequently, was that a written document was necessary before information was released or information was released to the billing name and address of the subscriber (thereby alerting the subscriber to the requested release, if it had not been the subscriber who actually requested the information).

[76] Pacific Telesis Survey, Question 2. This "trust" finding is not new, but reflective of high trust levels evidenced since 1979.

[77] Id., Question 3. See also CBT at 5 (citing to its Aragon Consulting Group Study, submitted as Appendix A to its original comments, which indicates that "almost half the respondents surveyed indicated that they would be extremely concerned about their CPNI being provided to other companies").

A more lax CPNI release process, one accommodating a broad range of approval mechanisms (such as those reflected in 47 CFR Section 64.1100 (dealing with PICs)),[78] while "friendly" to competitors has a real potential to result in "false positive" customer approvals. Certainly, there will be customer complaints -- as their have been in the area of LOAs -- that their approval was falsely represented.[79]

One solution to this "problem" is to require that all third parties be required to represent that they have in their possession a written authorization from a customer before their CPNI is released. This, clearly, most protects customer privacy and does so in a manner most consistent with the *status quo* practices of ILECs. It may also best reflect the actual customer expectations of those served by the ILEC.[80] Thus, companies who choose this method should not be held to be acting in a manner that is "anticompetitive."[81]

On the other hand, companies choosing to be more "flexible" with respect to CPNI release should not be barred from such practices, but should be permitted to require indemnifications against false

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[78] Note MCI's reference to "third-party verification" ("TPV"), which is an approved mechanism under the referenced rule. MCI at 12.

[79] Bell Atlantic/NYNEX at 6-7 (noting that the "pernicious history of slamming" would support a Commission rule that customer approvals with respect to third party access to CPNI require a customer writing); BellSouth at 14-15 (noting that a need for a written record may be particularly acute when there is a concern over a carrier's representations of authority); SBC at 8, 20; BellSouth at 14; Directory Dividends at 7 (arguing that slamming activities strongly argue for a written document mandate for all carriers. With respect to the inclusive nature of the Directory Dividends argument, U S WEST reiterates that slamming generally involves moving a customer from an existing relationship to a new one, which clearly requires a greater level of protection than sharing information internally. Thus, the "slamming" teachings do not suggest that a written approval is necessary for a company to use information widely within the corporate enterprise.). U S WEST June 26, 1996 Comments, CC Docket No. 96-115 at 8 n.37.

[80] For example, an ILEC serving a territory that has high numbers of nonpublished and/or nonlisted customers might deem it appropriate to require a writing before CPNI is released. Compare Pacific Telesis at 6 (a state mandate).

[81] Compare AT&T's observation that under the provisions of Section 272(c)(1), "mere 'approval' of a customer would not trigger a disclosure requirement for any carrier" and that a carrier could require evidence of the approval (such as a written document); however, neither does the section prohibit the provision of CPNI in the absence of such a written communication. AT&T at 10-11 and n.12. And see SBC at 19.